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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/695,067

10/28/2003

J. Stewart Young

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Attn: Noreen Johnson - IP Legal Department

2600 Sofamor Danek Drive

MEMPHIS, TN 38132

EXAMINER

COTRONEO, STEVEN J

ART UNIT

PAPER NUMBER

3733

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/695,067	<b>Applicant(s)</b> YOUNG ET AL.	
	<b>Examiner</b> STEVEN J. COTRONEO	<b>Art Unit</b> 3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31, 34-46, 49, 51-55 and 57-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 62 is/are allowed.
- 6) ☒ Claim(s) 1-31, 34-46, 51-55, 57-61 and 63-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 10-11, 16-23, 29-31, 33, 34, 43, 53, 58-61 and 63-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crozet et al. (US Pat. 6,217,578 B1) in view of Lin (US Pat. 5,545,167) and in view of David et al. (US 6,267,543).

Crozet et al. disclose a cross-connector assembly for interconnecting a pair of orthopedic rods (Fig. 3), said assembly comprising an interconnection element (Fig. 3) including a first body (Fig. 3, ref. 46) and a stud (Fig. 3, ref. 50), said first body having a first aperture (Fig. 3, near aperture through which ref. 62 extends) formed therein (Fig. 3) and said stud extending from the body (Fig. 3), said first aperture including an upper portion formed having a lobed shape (Fig. 3); a first rod connector (Fig. 3, ref. 30) including a first shaft (Fig. 3) terminating in a first rod engaging portion (Fig. 3, near ref. 18) and a lobe (Fig. 3, near ref. 62) extending laterally from an end of said first shaft (Fig. 3) and displaced axially along said first shaft from the spinal first rod engaging portion (Fig. 3); a second rod connector (Fig. 3, ref. 20) including a second shaft having a second body (Fig. 3, ref. 34) carried thereon, said second body having a second aperture formed therein (Fig. 3, ref. 40), said second aperture having the stud received therein (Fig. 3)(Fig. 2); and a fastener configured to engage with the stud (Fig. 3, ref.

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56). The first aperture defines a first axis (Fig. 3) extending through the first body (Fig. 3) and the stud is positioned to lie substantially orthogonal to the axis (Fig. 3). The first shaft exhibits a substantially round cross-sectional profile (Fig. 3, near ref. 28). The first rod engaging portion comprises a curved member (Fig. 3, near ref. 18) configured to at least partially encircle a spinal rod (Fig. 3). The first rod engaging portion comprises a threaded aperture (Fig. 2, ref. 24) extending into the curved member (Fig. 2). The first shaft is substantially straight (Fig. 3). The second shaft is curved (as it has various curves, Fig. 3). The first shaft is slidably received within the first aperture to allow the first rod engaging portion to be spaced from the second rod engaging portion at varying distances (Fig. 3). The second shaft is rotatable about an axis defined by the stud to vary an angle defined by the first shaft and the second shaft (Fig. 3). The first shaft and the second shaft are curved (Fig. 3, as they have various curves, Fig. 3). The second aperture of the second shaft is configured to allow the second shaft to pivot along the axis defined by the stud (Fig. 3). The first rod connector is rotatable about an axis defined by the first shaft (Fig. 3). The second body on the second shaft includes a lower surface, wherein engagement of the fastener to the stud urges the lower surface to contact the first shaft and clamp the first shaft in a first orientation relative to the second shaft (Fig. 4B). The first rod connector is rotatable about an axis defined by the first shaft (Fig. 3). The first rod connector is rotatable about an axis defined by the stud (Fig. 3). The second rod connector is rotatable about an axis defined by the stud (Fig. 3). The first shaft of the first rod connector and the second shaft of the second rod connector are curved (Fig. 3, as they have various curves). The assembly comprises a first spinal

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rod secured to the first rod engaging portion (Fig. 3, ref. 12) and a second spinal rod secured to the second rod engaging portion (Fig. 3, ref. 14), wherein the first spinal rod is positioned to lie non-parallel to the second spinal rod (Fig. 3). Engagement of the fastener to the stud secures the second rod connector in a selected orientation (Fig. 3). The first spinal rod defines a first plane and the second spinal rod is positioned to lie in a plane different from the first plane (Fig. 3). The first rod engaging portion comprises a hook (Fig. 3, near ref. 18) sized to at least partially encircle a spinal rod, said hook extending laterally from the first shaft in a first direction (Fig. 3) and wherein said lobe extends laterally from the first shaft along said first direction (Fig. 3). The assembly has a smooth exterior surface (Fig. 3). The first and second shafts are configured to nest with each other (Fig. 2). The stud is monolithic with said body (Fig. 3). The stud has a longitudinal axis, and said first shaft has a longitudinal axis, and said stud longitudinal axis is oblique to said first shaft longitudinal axis (Fig. 3). The first shaft and said second shaft are capable of pivoting with respect to each other between a first position in which said first shaft and said second shaft are substantially parallel, and a second position in which said first shaft and said second shaft define an interior angle between them that is less than 180 degrees (Fig. 2)(Fig. 3). The second aperture has a central axis (Fig. 3), and said second rod connector has a channel for accommodating a spinal rod (Fig. 3, near ref. 20), said channel having a longitudinal axis (Fig. 3), and said central axis and said longitudinal axis are perpendicular to each other (Fig. 3).

A method of treating a spinal defect, said method comprising: securing a first

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spinal rod and a second spinal rod each to two or more vertebrae; and interconnecting the first spinal rod to the second spinal rod using the assembly of claim 1 (Fig. 1).

Crozet et al. disclose a cross-connector assembly for interconnecting a pair of orthopedic rods (Fig. 3), said assembly comprising: a first rod connector (Fig. 3, ref. 18) including a first shaft terminating in a first body (Fig. 3, near ref. 18) having a channel therethrough (Fig. 3, channel which ref. 12 rests in); a second rod connector (Fig. 3, ref. 20) including a second shaft (Fig. 3) defining a longitudinal axis (Fig. 3) and terminating on a first end with a rod engaging portion (Fig. 3, near ref. 20) and on an opposite second end with a second body (Fig. 3, near ref. 36), said second body having a first aperture therein (Fig. 3, ref. 40) defining a first central axis (Fig. 3), said first end of said second rod connector also including a second aperture (Fig. 2, ref. 26) therein defining a second central axis (Fig. 3) positioned to lie at an angle to the first central axis (Fig. 3); an interconnection element (Fig. 3, ref. 44) having a third body (Fig. 3, ref. 46) that includes a third aperture (Fig. 3, aperture through which ref. 62 extends) therein for receiving a portion of said first shaft (Fig. 3) and a stud (Fig. 3, ref. 50) protruding upwardly from said third body (Fig. 3).

A method of treating a spinal defect, said method comprising: securing a first spinal rod and a second spinal rod each to two or more vertebrae; and interconnecting the first spinal rod to the second spinal rod using the assembly of claim 44 (Fig. 3).

Crozet et al. disclose a cross connector comprising an interconnection element including a first body (Fig. 3, ref. 44) having an aperture (Fig. 3, aperture through which ref. 62 extends) formed therein and a stud (Fig. 3, ref. 50) extending from said body

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(Fig. 3); a first spinal rod connector (Fig. 3, near ref. 18) including a first shaft (Fig. 3) having a proximal portion received within said aperture (Fig. 3) and a distal end carrying a first spinal rod engaging portion (Fig. 3, near ref. 18) configured to at least partially encircle a spinal rod (Fig. 3), said first shaft having a projection at an end of said proximal portion (Fig. 3, near ref. 62), a second spinal rod connector (Fig. 3, near ref. 20) having a second body (Fig. 3) on a proximal end (Fig. 3), a second spinal rod engaging portion on a distal end (Fig. 3, near ref. 20) and a second shaft extending therebetween (Fig. 3), wherein said body includes a second aperture (Fig. 3, ref. 40) having the stud received therein (Fig. 3)(Fig. 2); and a single fastener (Fig. 3, ref. 56) to secure the first and second spinal rod connectors to each other at a user defined orientation relative to each other (Fig. 2)(Fig. 3).

A method of treating a spinal defect, said method comprising: securing a first spinal rod and a second spinal rod each to two or more vertebrae; and interconnecting the first spinal rod to the second spinal rod using the assembly of claim 53 (Fig. 3).

Regarding claims 1 and 53, Crozet et al. disclose the claimed invention except for the first shaft and said lobe slideably received within the first aperture such that said lobe passes through said first aperture and upon rotation of said first rod connector said lobe prevents said first rod connector from being removed from said first aperture; the first aperture is non-circular; rotation of the first rod connector induces the lobe to contact said first body and inhibit removal of the first shaft from the first aperture; the projection being able to move through said aperture when said shaft is in a first orientation with respect to said aperture, and being unable to move through said





It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have substituted the fastening mechanism of Crozet et al. with a fastening mechanism as taught by Lin in order to achieve the predictable result of inserting the shaft and preventing a shaft from being removed from an aperture. Crozet and Lin both teach locking mechanisms and substituting one mechanism for a second would be obvious to one of ordinary skill in the art.

The projection or lobe extends from the end towards the proximal section (the lobe of Crozet and Lin is located on the end of the shaft).

Crozet in view of Lin discloses the claimed invention with the lobe or projection being able to pass through the aperture in two orientations. Crozet in view of Lin does not disclose the lobe having only one orientation to pass through the aperture.

David et al. discloses a key lock mechanism that can have two orientation (fig 1) that the lobes can pass through an aperture or can have only one orientation that allows for the lobe to pass through the aperture (fig 4). The aperture is the second configuration has a semi-circular lower portion and a non circular upper portion (fig 6).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have substituted the double lobe design (two orientations) of Crozet et al. in view of Lin with single lobe design (one orientation) as taught by David et al. in order to achieve the predictable result of allow the lobe to pass through the aperture. **The single lobe is designed to pass through a matching lobed hole in Crozet et al. (fig 4A, 60) modified by Lin and David. This lobe would prevent the**

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**rod 28 from backing out of the hole while still allowing axial movement (The rod of Crozet still moves once it is inserted through the opening 60).**

Claims 8, 9, 12 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crozet et al. (US Pat. 6,217,578 B1) in view of Lin (US Pat. 5,545,167) and in view of David et al. (US 6,267,543) in view of Burgess et al. (US Pub. 2003/0114853 A1).

Crozet et al. in view of Lin and in view of David et al. disclose the claimed invention except for the first shaft being curved so as to be non-linear. Crozet et al. in view of Lin and in view of David et al. do, however, disclose the shafts extend between and connect the rod engaging portions of the device to one another (Crozet et al., Fig. 3), which in turn connects the spinal rods to one another (Crozet et al., Fig. 3).

Burgess et al. disclose a cross-connector assembly for interconnecting a pair of orthopedic rods (Fig. 6) that comprises shafts that are curved (Fig. 6, refs. 84 and 82). The shafts are used to extend between and connect rod engaging portions of the device to one another (e.g. Fig. 1), which in turn connects spinal rods to one another (e.g. Fig. 1)(Fig. 6).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have substituted the shafts of Crozet et al. in view of Lin in view of David et al. with curved shafts as taught by Burgess et al. in order to achieve the predictable result of extending between and connecting rod engaging portions of the device to one another, which in turn connects spinal rods to one another.

Having a curved rod would make a portion of the shaft to be at an oblique angle with the stud in the fixed position.

Claims 13-15, 24-28, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crozet et al. (US Pat. 6,217,578 B1) in view of Lin (US Pat. 5,545,167) and in view of David et al. (US 6,267,543) in view of Sherman et al. (US Pat. 5,976,135).

Crozet et al. in view of Lin in view of David et al. disclose the claimed invention except for a washer carried by the stud and positioned between the stud and the second aperture of the second rod connecting member.

Sherman et al. disclose a lateral connector assembly comprising a washer (Fig. 7, ref. 55) and the washer having splines (Fig. 7, ref. 60) and recesses (Fig. 6, ref. 58) and the second spinal rod connector having a lower surface (Fig. 11, ref. 72), which has a second set of splines (Fig. 11, ref. 82) which can matingly engage the splines of the washer, which allow the lateral connector to assume variable angular positions with respect to the washer (column 7, lines 1-19). The washer is made from a deformable material, since any material will deform when pressure is applied to it. The washer is capable of deforming when the fastener engages the stud. Engagement of the fastener can frictionally engage the washer to the first shaft of the first rod connector. The washer is capable of being carried by the stud and positioned between the stud and the second aperture of the second rod connecting member. This set-up enables the lateral connector to assume variable angular positions with respect to the washer (column 7, lines 1-19).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the cross-connector assembly of Crozet et al. in view of Lin in view of David et al. with a washer and the washer having splines and the second spinal rod connector with a lower surface, which has a second set of splines of Sherman et al., in order to allow the lateral connector to assume variable angular positions with respect to the washer (column 7, lines 1-19).

Claims 35, 36, 54, 55 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crozet et al. (US Pat. 6,217,578 B1) in view of Lin (US Pat. 5,545,167) and in view of David et al. (US 6,267,543) in view of Shluzas (US Pat. 6,554,832 B2).

Crozet et al. in view of Lin in view of David et al. disclose the claimed invention except for the assembly comprises an insert configured to at least partially encircle said first shaft, said insert disposed within said first aperture. The insert in combination with the first aperture define a ball and socket joint. An insert disposed within the second aperture, said insert configured to at least partially encircle said stud. The insert in combination with the second aperture define a ball and socket joint. The insert is substantially spherical. The insert is substantially cylindrical.

Shluzas discloses a cross-connector assembly for interconnecting a pair of orthopedic rods (Fig. 2) that comprises an insert (Fig. 2, ref. 52) configured to at least partially encircle a shaft (Fig. 2, ref. 42) of a rod connecting member (Fig. 2) extending through a first aperture (Fig. 2, ref. 40) and positioned in a second body (Fig. 2, ref. 30) and in communication with a second aperture (Fig. 2, aperture through which ref. 58 is

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placed). The insert creates a ball and socket type-joint (Fig. 2)(Fig. 4)(column 2, lines 33-34), which allows for pivotal movement of the rod connecting members relative to each other (Fig. 4) (column 2, lines 33-34) (column 2, lines 36-39) (column 2, lines 49-54) and further allows one rod connector to be slidable relative to the other rod connector (column 2, lines 39-44). This pivoting and sliding allows for greater adjustability and individualization of the device.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have constructed the device of Crozet in view of Lin and in view of David with an insert as taught by Shluzas, in order to create a ball and socket type-joint (Fig. 2)(Fig. 4)(column 2, lines 33-34), which would allow for pivotal movement of the rod connecting members relative to each other (Fig. 4) (column 2, lines 33-34) (column 2, lines 36-39) (column 2, lines 49-54) and would further allow one rod connector to be slidable relative to the other rod connector (column 2, lines 39-44). This pivoting and sliding would allow for greater adjustability and individualization of the device.

Claims 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crozet et al. (US Pat. 6,217,578 B1) in view of Lin (US Pat. 5,545,167) and in view of David et al. (US 6,267,543) in view of Schlapfer et al. (US 5,501,684).

Crozet et al. in view of Lin in view of David et al. discloses the claimed invention except for an insert disposed in the second aperture that encircles the stud.

Schlapfer et al. discloses an insert (fig 1, 21) that is positioned in an aperture of a connection device and surrounds a stud (fig 1 23) to allow for adjustment in all

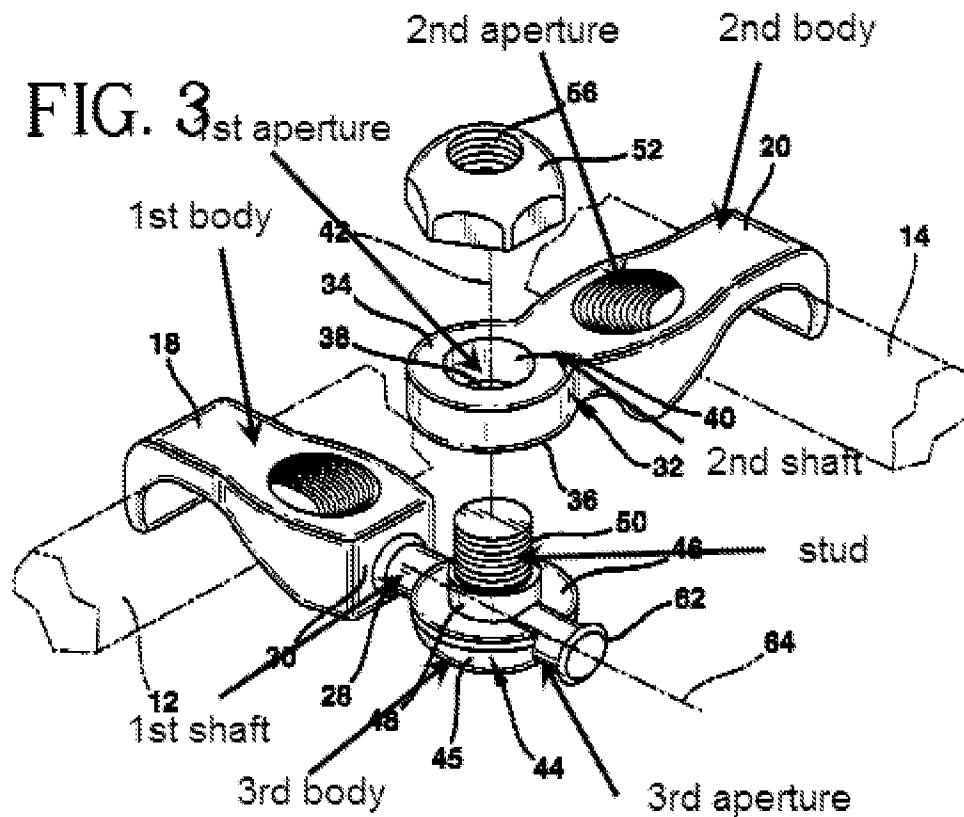
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directions (col. 2, ll. 28-29). The insert creates a ball and socket with the aperture. The insert is spherical (outside surface) and cylindrical (inside surface).

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the device of Crozet et al. in view of Lin in view of David et al. with an insert disposed in the second aperture that encircles the stud in view of Schlapfer et al. in order to allow for adjustment in all directions.

Claims 44-46, 49, 51 and 52 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crozet et al. (US Pat. 6,217,578 B1) in view of Schlapfer et al. (US 5,501,684) and in view of Finn et al. (US RE39035).

Crozet et al. discloses a cross-connector assembly (see fig 3 below) for interconnecting a pair of orthopedic rods comprises: a first rod connector (fig 3, 18) including a first shaft (fig 3, 28) terminating in a first body (fig 3, 30) having a channel therethrough; a second rod connector (fig 3, 20) including a second shaft defining a longitudinal axis and terminating on a first end with a rod engaging portion (fig 2, 22) and on an opposite second end with a second body a first aperture therein defining a first central axis (fig 3, 40). The first end of the second rod connector also has a second aperture (fig 2, 26) therein defining a second central axis positioned to lie at an angle to the first central axis. An interconnection element having a third body that includes a third aperture (fig 4, 58) therein for receiving a portion of the first shaft and a stud (fig 3, 50) protruding upwardly from the third body connects the first and second connector. A fastener (fig 3, 52) is received on the stud.



Crozet et al. discloses the claimed invention except for an insert disposed in the second aperture that encircles the stud and a fastener that extends through the first aperture and into an internal recess in the insert to fix the orientation.

Schlapfer et al. discloses an insert that is positioned in an aperture of a connection device and surrounds a stud and a fastener (fig 10, 11g) that extends through the first aperture and into an internal recess in the insert to allow for adjustment in all directions (col. 2, ll. 28-29) (motion allowed until the fastener is fully clamped col. 2, ll. 32-33). The insert includes a slit (fig 2, 27) extending along the vertical axis and has recesses (bottom part of fig 2, 24).

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It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the device of Crozet et al. with an insert disposed in the second aperture that encircles the stud in view of Schlapfer et al. in order to allow for adjustment in all directions.

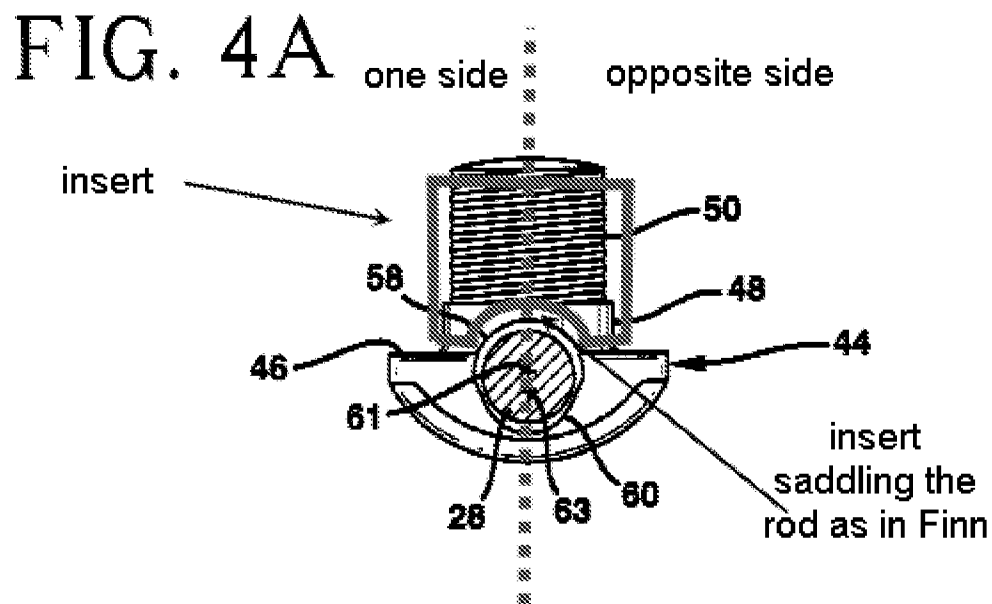
Crozet in view Schlapfer et al. discloses the claimed invention except for the insert having a lower surface having a concave portion.

Finn et al. discloses an insert (fig 4, 70) having a concave lower portion to be sized and shaped to engage a shaft (col. 5, ll. 26-34).

It would have been obvious at the time of the invention to modify the device of Crozet in view of Schlapfer et al. to include a concave portion on the lower portion in view of Finn et al. in order to size and shaped to mate with the shaft. (Fig 3 above of Crozet shows the shaft of first member to extend above the top surface of the stud. A concave bottom surface of the insert would ensure a positive connection between the insert and the first member leading to a more solid construct as is the case with Finn.)

**The insert would be on opposite sides of the stud (see fig 4A below).**





***Allowable Subject Matter***

Claim 62 is allowed.

***Response to Arguments***

Applicant's arguments filed 12/23/2010 have been fully considered but they are not persuasive. The applicant argues that David is non-analogous art. The examiner respectfully disagrees. David deals with a key lock mechanism that is similar to the Key lock mechanism of Lin et al. David is analogous art In response to applicant's argument that David is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, David deals with a key lock mechanism

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that is similar to the Key lock mechanism of Lin et al. David is analogous art in that it helps solve the problem of the backing out of a rod connection in a hole.

The applicant also argues that the modification would not result in axial movement after rotation. The examiner respectfully disagrees. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As stated above, the single lobe is designed to pass through a matching lobed hole in Crozet et al. (fig 4A, 60) modified by Lin and David. This lobe would prevent the rod 28 from backing out of the hole while still allowing axial movement (The rod of Crozet still moves once it is inserted through the opening 60).

With respect to claim 44 the applicant argues that insert does not engage on opposite sides of the stud. As shown in figure 4A above the insert would have to be on opposite sides of the stud as split up be the longitudinal axis of the stud.

The rejections are deemed proper.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN J. COTRONEO whose telephone number is (571)270-7388. The examiner can normally be reached on M-F 730-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. J. C./

Examiner, Art Unit 3733

/EDUARDO C. ROBERT/

Supervisory Patent Examiner, Art Unit 3733